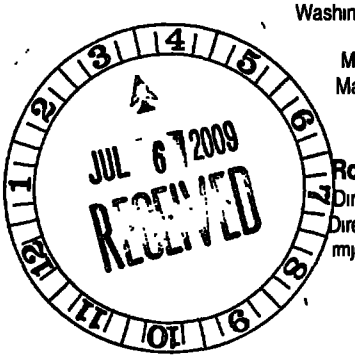
MAYER·BROWN

Mayer Brown LLP
1909 K Street, N W
Washington, D.C. 20006-1101

Main Tel (202) 263-3000
Main Fax (202) 263-3300
www mayerbrown com

Robert M. Jenkins III
Direct Tel (202) 263-3261
Direct Fax (202) 263-5261
rmjenkins@mayerbrown com



July 6, 2009

BY HAND DELIVERY

Anne K. Quinlan
Secretary
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

225335

Re: Docket No. AB 167 (Sub-No. 1189X)
Consolidated Rail Corporation—Abandonment
Exemption—in Hudson County, New Jersey

Docket No. AB 55 (Sub-No. 686X)
CSX Transportation, Inc.—Discontinuance
Exemption—in Hudson County, New Jersey

225336

Docket No. AB 290 (Sub-No. 306X)
Norfolk Southern Railway Company—
Discontinuance Exemption—in Hudson
County, New Jersey

225337

Dear Secretary Quinlan:

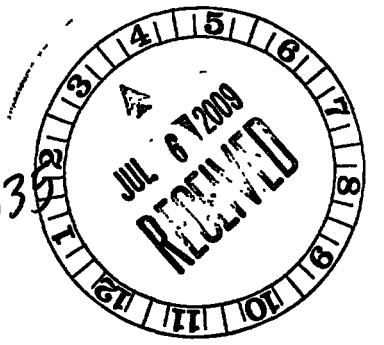
Enclosed for filing with the Board are the original and ten copies of Reply of Consolidated Rail Corporation to "Statement of City of Jersey City in Response to Tolling of OFA Time Period and Protective Appeal." Please date-stamp the enclosed extra copy and return it to our representative.

Sincerely yours,

Robert M. Jenkins III

RMJ/bs

Enclosures



BEFORE THE
SURFACE TRANSPORTATION BOARD

STB NO. AB 167 (SUB-NO. 1189X) 225335

CONSOLIDATED RAIL CORPORATION – ABANDONMENT EXEMPTION – IN HUDSON COUNTY, NEW JERSEY

STB NO. AB 55 (SUB-NO. 686X) 225336

CSX TRANSPORTATION, INC. – DISCONTINUANCE EXEMPTION – IN HUDSON COUNTY, NEW JERSEY

STB NO AB 290 (SUB-NO. 306X) 225337

NORFOLK SOUTHERN RAILWAY COMPANY – DISCONTINUANCE EXEMPTION – IN HUDSON COUNTY, NEW JERSEY

NOTICES OF EXEMPTION

REPLY OF CONSOLIDATED RAIL CORPORATION TO "STATEMENT OF CITY OF JERSEY CITY IN RESPONSE TO TOLLING OF OFA TIME PERIOD AND PROTECTIVE APPEAL"

Consolidated Rail Corporation ("Conrail") replies here to the "Statement of City of Jersey City in Response to Tolling of OFA Time Period and Protective Appeal" (hereinafter, "Protective Appeal"), which the Board accepted for filing by the City of Jersey City (the "City") on June 23, 2009.[1]

---

[1] On June 26, 2009, the United States Court of Appeals for the District of Columbia Circuit issued a decision in *Consolidated Rail Corporation v. Surface Transportation Board, et al.*, No. 07-1401, vacating the STB's August and December 2007 orders in which the Board had concluded that Conrail must obtain the Board's authorization to abandon the line at issue in this proceeding. *See Consolidated Rail Corp. v. STB*, No. 07-1401, slip op. at 2, 13-14. The Court concluded that "the Board lack[s] jurisdiction to resolve the question of the nature of the trackage sought to be abandoned." *Id.* at 13. Instead, "the district court *qua* the Special Court

The City's Protective Appeal is yet another in a series of highly repetitive pleadings filed by the City in these proceedings. This time, the City has filed a 19-page partial "appeal" of a decision of the Director of the Office of Proceedings ("Director"), served May 26, 2009 (hereinafter "May 26th Decision"), *granting* the motions filed by the City and CNJ Rail Corporation ("CNJ") to toll the due date to submit an OFA. The City complains about the following paragraph in the May 26th Decision:

> The OFA process is designed for the purpose of providing continued rail service. The Board need not require the sale of a line under the OFA provisions if it determines that the offeror is not genuinely interested in providing rail service or that there is no likelihood of future traffic. Any person who intends to file an OFA in this proceeding should address one or more of the following: whether there is a demonstrable commercial need for rail service, as manifested by support from shippers or receivers on the line or as manifested by other evidence of immediate and significant commercial need; whether there is community support for rail service; and whether rail service is operationally feasible.

May 26th Decision at 2-3 (internal footnote and citation omitted). Although none of the principles set forth in this paragraph has yet produced a decision adverse to the City, the City claims that it has felt it necessary to file a "protective appeal" to preserve its arguments against these principles in case they are later invoked as a basis for denying the City's OFA.

ARGUMENT

Because it is both improper and premature, the Protective Appeal should be dismissed on procedural grounds. In the alternative, if the Protective Appeal is considered on its merits, it

---

retains its exclusive jurisdiction to decide" the threshold issue concerning the nature of the trackage. *Id.* As a result of the D.C. Circuit's decision, Conrail anticipates that the instant proceeding will be terminated or suspended. Because, however, the mandate in *Consolidated Rail Corporation* has not yet issued, and the Board has not yet terminated or suspended this proceeding, Conrail is filing this response protectively in order to preserve its arguments that the City's Protective Appeal should be dismissed or denied.

should be denied because the challenged paragraph of the May 26th Decision is both legally proper and consistent with established Board precedent.

I. NO APPEAL LIES FROM THE MAY 26TH DECISION

The City invokes 49 C.F.R. § 1115.2 or, in the alternative, 49 C.F.R. § 1115.3 as the basis for its Protective Appeal. *See* Protective Appeal at 3. Neither of these provisions is applicable to the City's appeal.

Section 1115.2 is inapplicable because the decision was not rendered by "an administrative law judge, individual Board Member, or employee board." 49 C.F.R. § 1115.2. The Director is not an administrative law judge or an individual Board member. Nor is she an "employee board." *See* 49 C.F.R. § 1011.5 (defining "employee board" as the Accounting Board).

In addition, neither Section 1115.2 nor Section 1115.3 provides a basis for the City's appeal, because appeals in exempt abandonment proceedings are governed by 49 C.F.R. Part 1152, not Part 1115. *See* 49 C.F.R. § 1115.1(a) ("Abandonments and discontinuance proceedings instituted under 49 U.S.C. 10903 are governed by separate appellate procedures exclusive to those proceedings.").

Section 1152.25(e)(1) sets forth three categories of decisions that are subject to appeal in abandonment proceedings—specifically, decisions addressing (i) whether offers of financial assistance satisfy the standard of 49 U.S.C. § 10904(d); (ii) whether partially to revoke or reopen abandonment exemptions; and (iii) the applicability and administration of the Trails Act. 49 C.F.R. § 1152.25(e)(1). The May 26th Decision does not address whether an OFA satisfies 49 U.S.C. § 10904(d), which is not surprising, because no OFA has been filed in this proceeding yet, and the decision tolled the time for filing an OFA. Nor does the decision address partial revocation or reopening of an abandonment exemption or the applicability of the Trails Act.

Accordingly, the Board's rules do not provide for an appeal of the May 26th Decision, which addressed the tolling of the period for filing an OFA and the requirements for a successful OFA. Thus, the City's Protective Appeal is improper and should be dismissed.[2]

II. EVEN IF AN APPEAL DID LIE FROM THE MAY 26TH DECISION, THE CITY'S PROTECTIVE APPEAL SHOULD BE DISMISSED BECAUSE IT IS PREMATURE

As noted above, no adverse decision on an OFA filed by the City has as yet been rendered by the Board. The Director did not grant Conrail's request for a summary rejection of the OFA notices filed by the City and CNJ in this proceeding. Because the principles in the paragraph of the May 26th Decision challenged by the City have not yet been applied to deny any OFA the City may file, any appeal of that paragraph is premature and not ripe for decision.[3]

The May 26th Decision also is not ripe for appeal because the meaning of the OFA principles at issue will not be clear in the context of this case until the Board has the opportunity to apply them to a concrete OFA filed by the City. *If* the City files an OFA in this proceeding, and *if* the City feels aggrieved by the interpretation and application of the principles articulated in the May 26th Decision, there will be a fully mature dispute that is fit for the application of the Board's appellate procedures. But at this point in the proceedings, the City's appeal is premature, and any Board resolution of it would be an unnecessary advisory opinion.

Even though administrative processes are not subject to the strict ripeness rules that apply in Article III judicial proceedings, the fact that the dispute here is not ripe militates strongly against permitting the City's appeal at this juncture. In order to conserve Board resources and

---

[2] The City will not be prejudiced by a dismissal of its Protective Appeal on procedural grounds. If the City is aggrieved by the Board's ultimate decision on any OFA that it files, it can seek administrative reconsideration under 49 C.F.R. § 1152.25(e)(1)(i).

[3] Indeed, as a result of the D.C. Circuit's recent decision in *Consolidated Rail Corp. v. STB*, No. 07-1401 (D.C. Cir. June 26, 2009) (*see* note 1, *supra*), the Board may never have occasion to issue a decision on the City's OFA.

discourage unnecessary filings that effectively seek mere advisory opinions, the Board should decline to consider the City's appeal. Because, as noted above, under 49 C.F.R. § 1152.25(e)(1)(i), the City will be able to make its appellate arguments later if and when the Board rejects its OFA, the City will not be prejudiced by the dismissal of its Protective Appeal as premature.

III. IF THE CITY'S PROTECTIVE APPEAL IS CONSIDERED ON ITS MERITS, IT SHOULD BE DENIED.

The Protective Appeal also should be denied because its legal premises are fundamentally incorrect. The challenged paragraph of the May 26th Decision is amply supported by applicable law and Board precedent. The long-settled purpose of the OFA process—which contemplates a forced sale of rail assets—is the continuation or restoration of freight rail service. To assure that OFA procedures are being used for that purpose, and to protect the integrity of the Board's procedures from abuse, the Board may consider any factors that are relevant for establishing the bona fides of an OFA and the feasibility of continued (or renewed) freight rail service on a line for which an OFA is made. In the circumstances of this case—in which the City's own prior statements and actions, as well as the actual circumstances on the ground, provide abundant reasons to question the bona fides of any OFAs put forward by the City and CNJ—the evidentiary showing contemplated by the May 26th Decision is unquestionably justified. Thus, there is no basis for the City's challenge to the May 26th Decision.

A. The Challenged Paragraph of the May 26th Decision Is Completely Consistent With the Established Purpose of the OFA Process.

That the purpose of OFAs is to preserve freight rail service is beyond dispute. The Board has made the point repeatedly, and numerous Federal appeals courts, after careful review of the applicable statute and Board precedent, have agreed. *See Borough of Columbia v. STB*, 342 F.3d 222, 226 (3d Cir. 2003) ("When a carrier has applied to abandon a rail line, 'any person' may file

an OFA, which is an offer to purchase or subsidize a rail line and *so to facilitate continued freight rail service.*") (emphasis added); *Kulmer v. STB*, 236 F.3d 1255, 1256 (10th Cir. 2001) (firmly rejecting petitioners' "claim [that] the STB erred in dismissing their OFA because the OFA provisions do not expressly require the STB to consider rail service continuation as a factor in approving an OFA" and upholding the STB's consideration of future freight service as a factor in weighing OFAs); *Redmond-Issaquah R.R. Pres. Ass'n v. STB*, 223 F.3d 1057, 1063 (9th Cir. 2000) ("[W]e hold that the STB's interpretation of § 10904 as authorizing it to reject OFAs which are not intended to enable the continuation of rail transportation is reasonable."); *Roaring Fork R.R. Holding Auth.—Abandonment Exemption—in Garfield, Eagle, & Pitkin Counties, CO*, 4 S.T.B. 116, 119 (served May 21, 1999) ("*Roaring Fork*") ("The OFA process is designed for the purpose of continuing to provide freight rail service, and is not to be used to obstruct other legitimate processes of law (whether Federal, state, or local) when continuation of such service is not likely."), *aff'd sub nom. Kulmer v. STB*, 236 F.3d 1255 (10th Cir. 2001); *BNSF Ry. Co.—Abandonment Exemption in King County, WA—in Matter of OFA*, 3 S.T.B. 634, 636 (served Aug. 5, 1998) ("*King County*") (OFA process "envisions that a party that acquires a rail line under section 10904 will continue to provide rail service"), *aff'd sub nom., Redmond-Issaquah R.R. Pres. Ass'n. v. STB*, 223 F.3d 1057 (9th Cir. 2000).

Thus, the City's assertion (Protective Appeal at 2) that "[t]he agency's general rule is that OFA's are allowed to go forward so long as made by a financially responsible party" is flatly wrong. The STB's consistent position has been that it will reject an OFA if it finds either that (1) the OFA proponent has no genuine interest in providing freight rail service or (2) there is no realistic likelihood of such traffic over the line to be abandoned. *See, e.g., UP R.R. Co.—Abandonment & Discontinuance of Trackage Rights Exemption—in Los Angeles County, CA,*

STB Docket No. AB-33 (Sub-No. 265X), slip op. at 2 (served May 7, 2008) ("*Los Angeles County*"). *See also Kulmer*, 236 F.3d at 1257 ("It would be difficult indeed to justify a statute that forces a rail carrier desiring to discontinue freight rail service to sell its lines solely because a 'financially responsible' person offers to purchase them. Whereas a statute that forces the sale of potentially abandoned lines to 'financially responsible' persons who will continue rail service at least furthers a legitimate government interest in preserving access to, and service over, rail lines."); *Redmond-Issaquah*, 223 F.3d at 1062 ("[T]he STB must consider whether the financial assistance being offered will enable rail transportation to be continued."); *Roaring Fork*, 4 S.T.B. at 119-20 ("[W]hen disputed, an offeror must be able to demonstrate that its OFA is for continued rail freight service. Where, as here, the line is not currently active, there must be some assurance that shippers are likely to make use of the line if continued service is made available, and that there is sufficient traffic to enable the operator to fulfill its commitment to provide that service.") (citations omitted) (quoted with approval in *Borough of Columbia*, 342 F.3d at 230).

In determining whether an OFA is made with the intent to provide freight rail service and whether such service is likely to be provided, the Board may consider a variety of factors tailored to the circumstances of the case. As the Third Circuit has stated, "it must be remembered that the STB is engaging in a comprehensive examination of the facts in each OFA/abandonment proceeding." *Borough of Columbia*, 342 F.3d at 232. Here, the Board has ample reason to require the City and CNJ to establish that they intend to provide freight rail service if their OFAs are granted, and that such service is, in fact, likely to result. As Conrail has pointed out in previous filings, there is no evidence that the City or CNJ has either the interest or practical ability to start up a freight rail service on the Harsimus Branch, and there is no evidence that there is sufficient—indeed, any—shipper demand for freight rail service to support a viable

freight rail operation. *See, e.g.*, Conrail's Reply to Notices of Intent to File An Offer of Financial Assistance at 7-11 (filed Apr. 1, 2009) ("Conrail's Apr. 1 Reply"); Conrail's Mot. to Strike or, in the Alternative, for Acceptance of Reply to Reply at 4-5, 7, 9, 10 (filed May 5, 2009) ("Conrail May 5th Motion").

As the Board is well aware, the line has been inactive for years, and much of it now is occupied by incompatible development. In light of these facts, it makes eminent sense to ask the offerors to address whether there is a demonstrable need for freight service as manifested *either* by support from shippers or receivers on the line or as manifested by other evidence of immediate and significant commercial need.[4]

As Conrail also has pointed out, the City has reversed its position on development of the line. "The City has worked assiduously, and successfully, to rid the vicinity of any and all industrial operations and replace them with residential developments, retail stores, office buildings, hotels, and other high-end developments." Conrail's Apr. 1 Reply at 2 (citing *City of Jersey City, Rails to Trails Conservancy, Pa. R.R. Harsimus Stem Embankment Pres. Coal., & N.J. State Assemblyman Louis M. Manzo—Pet. for Declaratory Order*, STB Finance Docket No. 34818, slip op. at 4-5 (served Aug. 9, 2007) ("*City of Jersey City*")). And the City affirmatively told the Board that it and the other petitioners "do not intend to reactivate rail service over the [Harsimus Branch] Embankment." *City of Jersey City*, slip op. at 7. Now, the City has reversed course, although it has not appropriated or obtained funding for resuming freight operations on

[4] It bears noting that in challenging the Director's reference to "immediate and significant commercial need," the City ignores the fact that such a showing would be required only in the absence of evidence of support from shippers or receivers on the line. *See* May 26th Decision at 3. If the City and CNJ are unable to produce evidence of support from shippers or receivers on the line, it makes eminent sense to require them, in the alternative, to present "other evidence of immediate and significant commercial need."

the line. In the face of such inconsistent positions by a governmental entity, the Director was fully justified in asking for evidence of community support for rail operations.

Such an inquiry is doubly sensible where, as here, there has been a public outcry against the use of certain structures on the line for anything other than park or trail use. Contrary to the City's argument—which essentially is that the City's ability to implement freight operations should be presumed—it is highly doubtful that a governmental entity will be able to carry out a large-scale and controversial transformation of already-developed property into a freight rail line without strong public support for such a project. Indeed, there may be greater cause to question the ability of a *governmental* entity led by elected officials to follow through on necessarily long-term rail development plans in the face of public opposition than there would be if a private for-profit entity were the proponent of an OFA. Where, as here, the governmental entity's plans have changed radically with changes of administration, information about the public support for the current administration's eleventh-hour proposals is necessary.

Finally, in light of the long period that the Harsimus Branch has been out of service and the lack of rail infrastructure on the line, the Director is fully justified in asking the offerors to provide information on "whether rail service is operationally feasible." May 26th Decision at 3. An OFA cannot be granted for a line on which freight rail operations are not operationally feasible, because the only legitimate purpose of an OFA is to allow freight rail operations to continue or be revived. That the City objects to the requirement that it show how freight operations are operationally feasible itself raises questions about the City's motives in proposing to make an OFA.

B. The City's Arguments Against the May 26th Decision Misrepresent the Law and Mischaracterize the Cases.

We already have addressed a number of the City's arguments against the portions of the May 26th Decision to which it objects. Here we address the City's repeated mischaracterization of the law and the cases.

1. The City repeatedly invokes the STB's standard for granting an *exemption* from the OFA provisions. *See, e.g.* , Protective Appeal at 2, 5-8, 10-11, 12-13, 16-19. This standard and the City's arguments based on it are completely irrelevant here. Conrail has made crystal clear that it is not seeking an exemption from the OFA process. Conrail May 5th Motion at 2-3, 11-12. The issue before the Board, and the issue addressed by the Director in the May 26th Decision, is not whether to grant an exemption from the OFA provisions but whether an OFA submitted by the City will be granted on the merits.

2. The City argues that the Board in past cases has required an OFA proponent to show more than financial responsibility only because the right of way was needed for a legitimate non-freight rail public purpose. *See* Protective Appeal at 5-6, 11-13, 16-19. This argument misconstrues the cases. In *King County,* for example, neither the Board nor the Ninth Circuit on appeal based its rejection of the OFA on the existence of an alternative public use for the line. As the Ninth Circuit noted, the fact that the offeror was seeking to upend plans to convert the line into a trail was a subsidiary issue: "The critical factor, and the basis for the OFA's rejection, was the STB's determination that future traffic on the line was highly, if not totally, unlikely." *Redmond-Issaquah*, 223 F.3d at 1064. There is nothing in the Board's decision or the Ninth Circuit's affirmance that indicates that the Board required proof of an actual intent to provide rail service only because there was a competing public non-freight use for the line. The Board's inquiry went beyond financial responsibility because the circumstances raised reasonable

questions about the offeror's intent and ability to provide freight service. *See King County*, 3 S.T.B. at 636-38.

Similarly, in *Roaring Fork*, the Board did not predicate its requirement that the OFA proponent demonstrate serious shipper support for freight rail service on an alternative non-freight public use for the line. Rather, the Board's consideration of the issues was prompted by a motion to dismiss the OFA (*see* 4 S.T.B. at 117). As the Board noted, "when disputed, an offeror must be able to demonstrate that its OFA is for continued rail freight service." *Id.* at 119. "Where, as here, the line is not currently active, there must be some assurance that shippers are likely to make use of the line if continued service is made available, and there is sufficient traffic to enable the operator to fulfill its commitment to provide that service." *Id.* at 119-20. In dismissing the OFA, the Board relied principally on the conclusion that "continued freight service would not be self-sustaining" and that "the statutory objective of continued freight rail service would not be likely to result from this OFA proposal." *Id.* at 120.

Finally, as Conrail showed in its May 5th Motion (at 11-12), there is not a word in *Los Angeles County* about "compelling public need" and nothing that indicates that the Board evaluated the OFA offeror's intent or the possibility of providing freight rail service on the line because there was an alternative public need for the line.[5]

[5] The City attempts to explain away *Los Angeles County* by once again attempting to conflate it with *Los Angeles County Metropolitan Transportation Authority—Abandonment Exemption—in Los Angeles County, CA*, STB Docket No. AB-409 (Sub-No. 5X) (served July 17, 2008) ("*LACMTA*"). Protective Appeal at 10-11. As Conrail pointed out in its May 5th Motion, the City is incorrect in characterizing *Los Angeles County* and *LACMTA* as closely associated cases. The two cases do not involve the same trackage and were separately owned. Conrail May 5th Motion at 10-11 & n.11.

In short, the City's argument that the imposition of the requirements set forth by the Director in the May 26th Decision would "chang[e] precedent" (Protective Appeal at 8) is demonstrably wrong.

3. The City also incorrectly argues that in *Borough of Columbia*, the OFA proponent "made no showings of any of the factors" cited by the Director in the May 26th Decision. Protective Appeal at 7. In fact, as stated by the Board, the OFA proponent in the underlying STB proceeding had provided a verified statement to the Board showing that it had "submitted its OFA in order to preserve rail service to its scrap metal processing facility and other shippers located on the line." *1411 Corp.—Abandonment Exemption—in Lancaster County, PA*, STB Docket No. AB-581X, 2001 WL 794278, at *1 (served July 16, 2001). In that verified statement, the OFA proponent showed why the company needed the line for its freight needs, represented that there were at least five potential freight shippers on the line, and introduced a letter from one of those shippers stating that it might tender three to fifteen rail cars per week. Ronald George Sahd V.S., STB Docket Nos. AB-529X & AB-581X, at 3-4, 9 & Ex. J (July 10, 2001). In short, the OFA proponent specifically showed both its genuine interest in continuing freight rail service on the line and the likelihood that freight rail service would in fact be provided.

4. Finally, the City also argues that because "the Board's regulations provide that the financial responsibility of a public entity filing an OFA must be presumed, the operational feasibility of restoring rail service, including freight rail service, on the Harsimus Branch presumably must also be presumed." Protective Appeal at 11. This is a non sequitur. There is no reason to think that the second presumption follows from the first.

More generally, there is no basis for the City's repeated suggestions that the Board should defer to the City's assertions and not require the information stipulated by the Director. *See, e.g.*, Protective Appeal at 13-14 (STB should treat local governments as "motivated buyers"); *id.* at 14-15 (governments should not be required to make same showing as private entities). In fact, a case cited several times by the City—*New York Cross Harbor Railroad v. STB*, 374 F.3d 1177 (D.C. Cir. 2004)—undercuts this argument.[6]

In *New York Cross Harbor Railroad*, the D.C. Circuit stated that "[t]he STB does not, and cannot, simply accede to a public entity's wishes in an abandonment proceeding; instead it weighs that interest as only one factor in [its] analysis." 374 F.3d at 1184 (internal quotation marks omitted). The Court went on to state that "[m]ore importantly, the STB itself—not New York City—is to determine the public convenience and necessity." *Id.* at 1185 (internal quotation marks omitted). Thus, ironically, it is the City that is inviting the STB to depart from precedent and weigh improperly the relevant interests.

CONCLUSION

For the foregoing reasons, the City's Protective Appeal should be dismissed or denied.

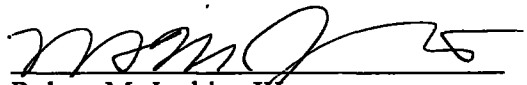
---

[6] The City invokes *New York Cross Harbor Railroad*, an adverse abandonment case, to argue that the Board has not given proper weight to the statutory interest in the continuation of freight rail service. *See* Protective Appeal at 15-16 & n.4. But the pro-freight-service policy reflected in *New York Cross Harbor Railroad* does not advance the City's cause here. While it is clear that the OFA statutory provisions favor the provision of freight rail service as against most other interests, nothing in the OFA provisions would support the use of OFAs to forcibly acquire a railroad's property for purposes other than the provision of freight rail service.

The City also invokes the policy reflected in 49 C.F.R. § 1150.21's Modified Certificates of Public Convenience and Necessity program in support of its argument. *See* Protective Appeal at 14. As Conrail explained in its May 5th Motion, the Modified Certificate program is irrelevant here because the program applies only to lines that already have been abandoned or approved for abandonment and have been acquired by a State or political subdivision of a State. *See* Conrail May 5th Motion at 9 n.8.

Respectfully submitted,

John K. Enright
Associate General Counsel
CONSOLIDATED RAIL CORPORATION
1717 Arch Street, 32nd Floor
Philadelphia, PA 19103
(215) 209-5012



Robert M. Jenkins III
Kathryn Kusske Floyd
MAYER BROWN LLP
1909 K Street, NW
Washington, DC 20006
(202) 263-3261

Dated: July 6, 2009

CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2009, I caused a copy of Reply of Consolidated Rail Corporation to "Statement of City of Jersey City in Response to Tolling of OFA Time Period and Protective Appeal" to be served by first-class mail (except where otherwise indicated) on those appearing on the attached Service List.

Robert M. Jenkins III

SERVICE LIST

Charles H. Montange (By Overnight Mail)
426 NW 162nd Street
Seattle, Washington 98177

Stephen D. Marks, Director
Hudson County Planning Division
Justice Brennan Court House
583 Newark Avenue
Jersey City, NJ 07306

Bradley M. Campbell, Commissioner
State Historic Preservation Office
NJ Department of Environmental Protection
401 East State Street
P.O. Box 404
Trenton, NJ 08625-0404

Mayor Jerramiah T. Healy
City Hall
280 Grove Street
Jersey City, NJ 07302

Michael D. Selender
Vice President
Jersey City Landmarks Conservancy
P.O. Box 68
Jersey City, NJ 07303-0068

Ron Emrich
Executive Director
Preservation New Jersey
30 S. Warren Street
Trenton, NJ 08608

Valerio Luccio
Civic JC
P.O. Box 248
Jersey City, NJ 07303-0248

Eric Fleming
President
Harsimus Cove Association
344 Grove Street
P.O. Box 101
Jersey City, NJ 07302

Jennifer Greely
President
Hamilton Park Neighborhood Association
22 West Hamilton Place
Jersey City, NJ 07302

Jill Edelman
President
Powerhouse Arts District Neighborhood Assoc.
140 Bay Street, Unit 6J
Jersey City, NJ 07302

Robert Crown
President
The Village Neighborhood Association
365 Second Street
Jersey City, NJ 07302

Dan Webber
Vice-President
Van Vorst Park Association
289 Varick Street
Jersey City, NJ 07302

Gretchen Scheiman
President
Historic Paulus Hook Association
121 Grand Street
Jersey City, NJ 07302

Robert Vivien
President
Newport Neighborhood Association
40 Newport Parkway #604
Jersey City, NJ 07310

Dolores P. Newman
NJ Committee for the East Coast Greenway
P.O. Box 10505
New Brunswick, NJ 08906

Gregory A. Remaud
Conservation Director
NY/NJ Baykeeper
52 West Front Street
Keyport, NJ 07735

Sam Pesin
President
Friends of Liberty State Park
75-135 Liberty Avenue
Jersey City, NJ 07306

Daniel D. Saunders
Deputy State Historic Preservation Officer
State Historic Preservation Office
NJ Department of Environmental Protection
P.O. Box 404
Trenton, NJ 08625-0404

Fritz Kahn
1920 N Street, NW
8th Floor
Washington, DC 20036-1601

Daniel H. Frohwirth
Jersey City Landmarks Conservancy
30 Montgomery Street
Suite 820
Jersey City, NJ 07302

Eric S. Strohmeyer
Vice President, COO
CNJ Rail Corporation
81 Century Lane
Watchung, NJ 07069

Maureen Crowley
Coordinator
Embankment Preservation Coalition
263 Fifth St.
Jersey City, NJ 07302

Robert Crowell
Monroe County Planning Department
Room 306 Courthouse
Bloomington, IN 47404

Jill Edelman
Powerhouse Arts district Neighborhood Association
140 Bay Street, Unit 6J
Jersey City, NJ 07302

Mike Greely
State Capital
Helena, MT 59601

Sam Pesin
Friends of Liberty State Park
P.O. Box 3407
Jersey City, NJ 07303-3407